HIGH COURT OF CHHATTISGARH: BILASPUR

Single Bench: **Hon'ble Shri Dilip Raosaheb Deshmukh, J.**

F.A. No. 25 of 2007

Appellant : Uttam Son of Shri Nakul, aged about 55 years, Resident of Village Charani Tola; Police Station and Tahsil Lormi; District Bilaspur (CG)

Versus

Respondents

1. Rekha Bai wife of Late Rajju Prasad; aged about 29 years;
2. Ku. Duj bai D/o Raju Prasad; aged about 6 years; minor; through Natural Guardian mother Rekha Bai, Non Applicant No.1.

Both resident of Village Charani Tola; Police Station and Tahsil Lormi; District Bilaspur (CG)

Civil appeal under Section 96 of the Code of Civil Procedure

Present:
Shri R.N. Jha, counsel for the appellant.
Shri R.K. Jain with Smt. N. Chaturvedi, counsel for the respondents.

ORAL ORDER
(Passed on 22.11.2007)

This matter is being disposed of finally today with the consent of parties.

(2) Heard.

(3) The appellant is aggrieved by order dated 4.2.2006 passed in M.J.C. No.9/2004 by the Additional District Judge, Mungeli granting maintenance of Rs.400/- and Rs.200/- to the respondents No.1&2 respectively against the appellant herein under Section 19 of the Hindu Adoptions & Maintenance Act, 1956 (hereinafter referred to as the Act).

(4) It is not disputed that the respondent No.1 is the widowed daughter-in-law of the appellant and the respondent No.2 is his minor grand-daughter. It is also not disputed that after the death of son of the appellant herein, the respondents are living at the maternal home

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of respondent No.1 in Village Charani Tola. It is further not disputed that the share in the estate of the husband has not been given by the appellant to the widowed daughter-in-law.

(5) The learned Additional District Judge, Mungeli, after considering the evidence led by the parties, awarded maintenance of Rs.400/- and Rs.200/- per month to the respondents No.1&2 respectively, from the date of application i.e. 10.10.2003.

(6) Learned counsel for the appellant has urged that under Section 19 of the Act, the appellant/father-in-law is not under a legal obligation to pay maintenance to his minor grand-daughter. It was also submitted that the amount of Rs.400/- awarded to the respondent No.1 as maintenance awarded by the learned Additional District Judge, Mungeli is not justified since the appellant possessed only one acre of agricultural land. No other ground was urged.

(7) On the other hand, learned counsel for the respondents has conceded that under Section 19 of the Act, the appellant is under a legal obligation only to pay maintenance to the widowed daughter-in-law and not to the grand daughter. So far as the maintenance awarded by the learned Additional District Judge, Mungeli for the respondent No.1 i.e. widowed daughter-in-law is considered, he has argued in support of the impugned order.

(8) Having considered the rival submissions, I have perused the record. Under Section 19 of the Act, a Hindu Wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law. Only exception to this is to be found in the proviso to Section 19 (1) of the Act. In an application under Section 19 of the Act, the widowed daughter-in-law is required to prove that she is unable to maintain herself out of her own earning or other property or, where she has no property of her own, is unable to obtain maintenance from the estate of her husband. In this appeal, it is not in dispute that the share in the estate of the husband has not been given by the appellant to the widowed daughter-in-law. The learned Court below has, on proper appreciation of evidence led by the parties, held that the widowed

daughter-in-law is unable to maintain herself out of her own earnings and has no property of her own.

(9) In view of the above, grant of maintenance of Rs.400/- in favour of the respondent No.1/widowed daughter-in-law from the date of application cannot be faulted with.

(10) In this view of the matter, the appeal is partly allowed. The impugned order, so far as it relates to awarding a monthly maintenance of Rs.400/- to the respondent No.1 from the date of application i.e. 10.10.2003 is concerned, is affirmed. So far as the award of Rs.200/- as monthly maintenance for the respondent No.2 is concerned, is set aside.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Priya